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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ALLSTATE LIFE INSURANCE COMPANY,

Plaintiff,

SAAD ATTISHA.

Defendant.

CASE NO. 15cv2211 JM(BGS)

ORDER GRANTING IN PART AND
DENYING IN PART MOTION TO
DISMISS; GRANTING LEAVE TO
AMEND

16 Defendant Saad Attisha (“Mr. Attisha”) moves to dismiss two of the six claims
17 alleged by Plaintiff Allstate Life Insurance Company (“Allstate”). Allstate opposes the
18 motion and requests leave to amend to add a Money Had and Received claim. Pursuant
19 to Local Rule 7.1(d)(1), the court finds the matters presented appropriate for resolution
20 without oral argument. For the reasons set forth below, the court grants in part and
21 denies in part the motion to dismiss and grants Allstate 15 days leave to amend from the
22 date of entry of this order to file a First Amended Complaint.

BACKGROUND

24 On October 2, 2015, Allstate commenced this diversity action by alleging six
25 claims for relief: (1) Unjust Enrichment; (2) Conversion; (3) Constructive Trust; (4)
26 Temporary Restraining Order; (5) Preliminary Injunctive Relief; and (6) Permanent
27 Injunctive Relief. In broad brush, Allstate seeks to recover \$374,964.74 in monies
28 inadvertently paid to Mr. Attisha as guardian ad litem for Renee Attisha (“Renee”).

1 On July 19, 1988, the Superior Court of California, San Diego County, approved
2 the settlement of a personal injury claim in In the Matter of the Disputed Claim of
3 Renee Attisha, a Minor, by and through her Guardian ad Litem, Saad “Steve” Attisha,
4 Case No. BE598257. (Compl. ¶13). Mr. Attisha, as guardian ad litem for Renee, and
5 Fire Insurance Exchange entered into a settlement agreement (the “Settlement
6 Agreement”) which required payments, beginning on August 20, 1988, increasing by
7 3% annually, for 10 years guaranteed and then for the life of Renee, to be issued to Mr.
8 Attisha as guardian at litem. (Compl. ¶¶13-14).¹

9 Unbeknownst to Allstate, Renee died on January 7, 1990. Payments, according
10 to the Settlement Agreement, should have ceased after August 1998. Mr. Attisha never
11 informed Allstate of Renee's death. Allstate alleges that it learned in May 2015 that
12 Renee had died and at that time stopped making payments to Mr. Attisha. The
13 Complaint specifically alleges that Allstate conferred a benefit upon Mr. Attisha in the
14 amount of \$374,964.74 and that it would be unjust for Mr. Attisha to retain the benefits.

DISCUSSION

16 | Legal Standards

17 Federal Rule of Civil Procedure 12(b)(6) provides that dismissal is proper only
18 in "extraordinary" cases. United States v. Redwood City, 640 F.2d 963, 966 (9th Cir.
19 1981). Courts should grant 12(b)(6) relief only where a plaintiff's complaint lacks a
20 "cognizable legal theory" or sufficient facts to support a cognizable legal theory.
21 Balistreri v. Pacifica Police Dept., 901 F.2d 696, 699 (9th Cir. 1990). Courts should
22 dismiss a complaint for failure to state a claim when the factual allegations are
23 insufficient "to raise a right to relief above the speculative level." Bell Atlantic Corp.
24 v. Twombly, 550 U.S. 544, 555 (2007) (the complaint's allegations must "plausibly
25 suggest[]" that the pleader is entitled to relief); Ashcroft v. Iqbal, 556 U.S. 662 (2009)
26 (under Rule 8(a), well-pleaded facts must do more than permit the court to infer the

¹ Fire Insurance Exchange assigned the obligation to make payments to Allstate Settlement Corporation who purchased the annuity from Allstate to fund the payments called for in the Settlement Agreement. (Compl. ¶¶ 2, 15, 16).

1 mere possibility of misconduct). “The plausibility standard is not akin to a ‘probability
 2 requirement,’ but it asks for more than a sheer possibility that a defendant has acted
 3 unlawfully.” Id. at 678. Thus, “threadbare recitals of the elements of a cause of action,
 4 supported by mere conclusory statements, do not suffice.” Id. The defect must appear
 5 on the face of the complaint itself. Thus, courts may not consider extraneous material
 6 in testing its legal adequacy. Levine v. Diamanthuset, Inc., 950 F.2d 1478, 1482 (9th
 7 Cir. 1991). The courts may, however, consider material properly submitted as part of
 8 the complaint. Hal Roach Studios, Inc. v. Richard Feiner and Co., 896 F.2d 1542, 1555
 9 n.19 (9th Cir. 1989).

10 Finally, courts must construe the complaint in the light most favorable to the
 11 plaintiff. Concha v. London, 62 F.3d 1493, 1500 (9th Cir. 1995), cert. dismissed, 116
 12 S. Ct. 1710 (1996). Accordingly, courts must accept as true all material allegations in
 13 the complaint, as well as reasonable inferences to be drawn from them. Holden v.
 14 Hagopian, 978 F.2d 1115, 1118 (9th Cir. 1992). However, conclusory allegations of
 15 law and unwarranted inferences are insufficient to defeat a Rule 12(b)(6) motion. In
 16 Re Syntex Corp. Sec. Litig., 95 F.3d 922, 926 (9th Cir. 1996).

17 **The Unjust Enrichment Claim**

18 Plaintiff is correct that California law does not recognize a standalone cause of
 19 action for unjust enrichment. “The phrase ‘Unjust Enrichment’ does not describe a
 20 theory of recovery, but an effect: the result of a failure to make restitution under
 21 circumstances where it is equitable to do so.” Melchior v. New Line Productions, Inc.,
 22 106 Cal.App. 4th 779, 793 (2003).

23 Technically, Plaintiff’s argument has merit. California law does not recognize
 24 a standalone cause of action for “unjust enrichment.” The Ninth Circuit recently, and
 25 directly, addressed this argument.

26 As the district court correctly noted, in California, there is not a
 27 standalone cause of action for ‘unjust enrichment,’ which is synonymous
 28 with ‘restitution.’ Durell v. Sharp Healthcare, 183 Cal.App. 4th 1350, 108
 Cal.Rptr3d 682, 699 (2010). However, unjust enrichment and restitution
 are not irrelevant in California law. Rather, they describe the theory
 underlying a claim that a defendant has been unjustly conferred a benefit

1 “through mistake, fraud, coercion, or request.” 55 Cal. Jur. 3d Restitution
 2 § 2. The return of that benefit is the remedy “typically sought in a
 3 quasi-contract cause of action.” Id.; see Munoz v. MacMillan, 195
 4 Cal.App.4th 648, 124 Cal.Rptr.3d 664, 675 (2011) (“Common law
 5 principles of restitution require a party to return a benefit when the
 6 retention of such benefit would unjustly enrich the recipient; a typical
 7 cause of action involving such remedy is ‘quasi-contract.’ ”). When a
 8 plaintiff alleges unjust enrichment, a court may “construe the cause of
 9 action as a quasi-contract claim seeking restitution.” Rutherford Holdings,
 10 LLC v. Plaza Del Rey, 223 Cal.App.4th 221, 166 Cal.Rptr.3d 864, 872
 11 (2014).

12 Astiana v. Hain Celestial Group, Inc., 783 F.3d 753, 762 (2015).

13 Consistent with Federal Rule of Civil Procedure 1 (The rules “should be
 14 construed, administered, and employed by the court and the parties to secure the just,
 15 speedy and inexpensive determination of every action and proceeding.”), and construing
 16 the unjust enrichment claim as one arising in quasi-contract, the court denies the
 17 motion. The complaint adequately informs Plaintiff of the nature of this claim.
 18 Plaintiff is alleged to have received substantial financial benefits to which he was not
 19 entitled because Allstate mistakenly believed that Renee was alive as late as May 2015,
 20 when, in fact, Renee died in 1990, and payments should have ceased in July 1998, the
 21 date when the ten-year guaranteed period of payments expired. See Prakashpalan v.
 22 Engstrom, Lipscomb & Lack, 223 Cal.App.4th 1105, 1132 (2014) (One is unjustly
 23 enriched where he or she receives a benefit and unjustly retains the benefit at the
 24 expense of another). Nothing more is required to state a claim.

25 In sum, the court denies the motion to dismiss the unjust enrichment claim.

26 **The Constructive Trust Claim**

27 Plaintiff correctly argues that a “constructive trust is an equitable remedy, not a
 28 substantive claim for relief.” PCO, Inc. v. Christensen, Miller, Fin., Jacobs, Glaser,
Weil & Shapiro, LLP, 150 Cal.App. 4th 384, 398 (2007). The court notes that the
 29 Complaint’s remedy allegations do not request the imposition of a constructive trust.
 30 While some courts have permitted separate causes of action for constructive trust, see
 31 Clifford v. Concord Music Corp., 2012 U.S. Dist. LEXIS 14084 (N.D. Cal. Feb. 6,
 32 2012), the better practice is to provide notice in the Complaint’s remedy section that

1 Allstate seeks the imposition of a constructive trust (in addition to setting forth the
2 factual basis for the remedy in the body of the complaint).

3 In sum, the court grants the motion to dismiss the constructive trust claim, with
4 leave to amend.

5 **Leave to Amend**

6 Allstate requests leave to amend to assert a Money Had and Received cause of
7 action. Pursuant to Fed.R.Civ.P. 15 (a), leave is to be freely given. Accordingly, the
8 courts grants Allstate leave to amend to state any additional causes of action and to
9 correct deficiencies identified in the Complaint.

10 In sum, the court denies the motion to dismiss the unjust enrichment claim, grants
11 the motion to dismiss the constructive trust claim, and grants Allstate 15 days leave to
12 amend from the date of entry of this order.

13 **IT IS SO ORDERED.**

14 DATED: June 9, 2016

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cc: All parties

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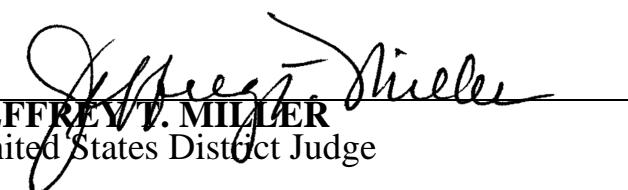
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JEFFREY T. MILLER
United States District Judge